



David L. Hecht
Partner
P: (212) 851-6821
E: dhecht@hechtpartners.com

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VIA E-MAIL

David R. Eberhart
O'Melveny & Myers LLP
Two Embarcadero Center
28th Floor
San Francisco, California 94111-3823
deberhart@omm.com

Re: Ashley Gjøvik

Dear Mr. Eberhart,

I represent Ms. Gjøvik. I am in receipt of your letter dated September 15, 2021 and subsequent email communication with my client. Going forward, please direct all such correspondence to me.

As you are aware, Ms. Gjøvik has already complied with your September 15, 2021 demand to remove certain images from some of her Twitter posts. However, I write regarding the inappropriateness of your requests, which may comprise copyright misuse. While I understand that Apple is not opposed to taking aggressive litigation postures (and indeed has a history of doing so), I remind you of your ethical duties as an attorney regarding the assertion of claims that have no basis in fact or law.

Your September 15, 2021 letter alleges that Ms. Gjøvik violated the Confidentiality and Intellectual Property Agreement with Apple dated January 31, 2015 (the "IPA"). You are incorrect. The IPA does not cover the images/video that Ms. Gjøvik posted. For example, you take issue with Ms. Gjøvik's post of screenshots of an automated email sent to Ms. Gjøvik from "Ask," "an internal survey solution." The email itself was not marked as confidential. Further, there is no suggestion in the email that the in-person study referenced in the email was restricted to Apple employees or that its existence was confidential. The content of the automated email also contained nothing that could be considered secret or otherwise proprietary: there was no disclosure of the content, methodology, identity of any participants in the survey (other than Ms. Gjøvik), or any of the survey's findings. The posted image of the email merely noted what was already known

to the public: Apple was conducting 3D scans of human ears to “collect representative ear geometry data across age, gender, and ethnic groups” and to benefit “audio research efforts and better our understanding of ear geometry variance.” It is no secret that Apple has been scanning a wide range of human ears to perfect its various AirPods products. In fact, Apple’s Vice President of Product Marketing, Greg Joswiak, spoke publicly about the 3D ear scans over a year ago:

“We had done work with Stanford to 3D-scan hundreds of different ears and ear styles and shapes in order to make a design that would work as a one-size solution across a broad set of the population,” Joswiak says. “With AirPods Pro, we took that research further – studied more ears, more ear types. And that enabled us to develop a design that, along with the three different tip sizes, works across an overwhelming percentage of the worldwide population.”

See Jeremy White, *The secrets behind the runaway success of Apple’s AirPods*, Wired (September 5, 2020), available at <https://www.wired.co.uk/article/apple-airpods-success>.

Accordingly, Ms. Gjovik cannot face restriction in disclosing a non-confidential email about the mere existence of a survey concerning 3D ear scanning (scanning that Apple had already publicly disclosed much earlier) sent to her during the period in which Apple put her on administrative leave. Apple’s demand for Ms. Gjovik to remove such content appears, therefore, to be pretextual.

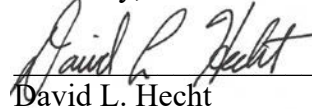
Your September 15, 2021 letter and subsequent email communication also takes issue with image/video that you contend “were generated by a confidential internal Apple application during confidential Apple-internal user studies.” Apple holds no copyright to these images, which were not authored by a human. As you are aware, United States copyright law only protects “the fruits of intellectual labor” that “are founded in the creative powers of the mind.” *Trade-Mark Cases*, 100 U.S. 82, 94 (1879). Because copyright law is limited to “original intellectual conceptions of the author,” Apple would be unable to register any of the images or video generated by the “Glimmer” app since a human being did not create the work. *Burrow-Giles Lithographic Co. v. Sarony*, 111 U.S. 53, 58 (1884). Apple therefore cannot allege infringement of any copyright by Ms. Gjovik.

To the extent Apple argues that the images taken by the Glimmer app are confidential, they are not marked as such. You also have not alleged how mere images of Ms. Gjovik, in her home, taken by the Glimmer app, on Ms. Gjovik’s own phone, could qualify as confidential and/or

proprietary information under the IPA. For example, your letter fails to acknowledge that the images posted were (a) taken by an automated process running on Ms. Gjøvik's own iPhone and (b) captured her own likeness and portions of her living space. There can be no doubt that Ms. Ms. Gjøvik is permitted to post to the public her legitimate concerns about images of her, in her home, captured by an automated process, on her own phone. Additionally, your letter fails to acknowledge that beyond the non-proprietary images Ms. Gjøvik posted, she intentionally rendered unreadable any conceivably non-public information when posting these otherwise non-proprietary images. Your claims of any violation of the IPA based on the posting of these images appear, therefore, to have no basis in fact or law.

Given Ms. Gjøvik's removal of the content you referred to, coupled with the infirmities of your intellectual property claims in the September 15, 2021 letter, we consider this issue closed, and expect that Apple will immediately cease sending any further inappropriate demands.

Sincerely,



David L. Hecht
Hecht Partners LLP

cc: Erika Heath, Esq.
Ashley M. Gjøvik